

SERVED: July 10, 2008

NTSB Order No. EA-5396

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. § 800.24)
on the 10th day of July, 2008

_____)	
ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18122
v.)	
)	
BRADLEY PETER HANGER,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal that respondent has filed in this proceeding, because respondent did not perfect his appeal by filing a timely appeal brief, as Section 821.48(a) of the Board's Rules of Practice requires (49 C.F.R. Part 821).¹ The Administrator's motion, to which

¹ Section 821.48(a) provides as follows:

§ 821.48(a) Briefs and oral argument.

(a) Appeal brief....each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where

respondent filed a responsive pleading, is granted.

The record establishes that respondent, through counsel, filed a timely notice of appeal from the law judge's March 28, 2008 oral initial decision.² Respondent, however, did not thereafter file a timely appeal brief, and has not provided good cause for his failure to do so.

To be timely, respondent had to file his appeal brief on or before May 19, 2008. He filed a brief with a certificate of service reflecting a date of May 28, 2008.

In response to the motion to dismiss, respondent's counsel states that, "[T]he appellate brief could hardly be filed in a cogent manner absent the final and signed initial decision nor the full transcript of the proceedings," and that, "the filing of the brief within the accustomed time and before receiving the full transcript and the signed edited copy of the initial decision was unachievable." Upon inquiry to the Board's Office of Administrative Law Judges, it was determined that the full transcript was mailed by priority mail to respondent's counsel on April 18, 2008. Even so, had the transcript been mailed later, this would not suffice to establish good cause for the filing of an untimely appeal brief, particularly in the absence of a request to file a brief out of time before the brief is due. In addition, at the conclusion of the hearing, respondent's counsel was provided a written copy of the Board's appeal procedures. See ALJ Exh. No. 1.

Without good cause to excuse a failure to file a timely appeal brief, or a request to file one out of time before it is due, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. Respondent's appeal is dismissed.

Gary L. Halbert
General Counsel

(..continued)

a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

² The law judge affirmed the Administrator's order suspending respondent's airline transport pilot certificate for 180 days for various alleged Federal Aviation Regulation violations.